

APPENDIX A

RESOURCES

Resources

Listed below are citations to statutes, court rules, cases, and other sources relevant to the L-GAL's role in child protective proceedings. This list is only intended to introduce a L-GAL to basic sources; it is not intended to be exhaustive.

Michigan Statutes

Child Protection Law, MCL 722.621 et seq. These statutes govern reports to and investigation by Child Protective Services, FIA, of suspected child abuse and neglect.

Juvenile Code, MCL 712A.1 et seq. This code contains the substantive and procedural law governing child protective proceedings in the Family Division of Circuit Court.

Michigan Adoption Code, MCL 710.21 et seq. This code contains the substantive and procedural law governing adoption proceedings in the Family Division of Circuit Court.

Estates & Protected Individuals Code, MCL 700.1101 et seq. Includes provisions for appointment of guardians.

Child Care Organizations, MCL 722.111 et seq. Licensing and other requirements for foster care families and institutions; includes procedure for obtaining variance to licensing rules or statutes to allow placement of siblings together, and for obtaining consent for medical treatment of a court ward.

Foster Care Review Boards, MCL 722.131 et seq. Provides for citizen review of foster care cases.

Foster Care & Adoption Services Act, MCL 722.951 et seq. Includes provisions governing FIA foster care and contract agency caseworkers.

Michigan Children's Institute, MCL 400.201 et seq. Describes the authority of this agency, which is located within FIA, and to which children may be committed for adoption planning and other services following termination of parental rights.

Family Division of Circuit Court, MCL 600.1001 et seq. Describes the jurisdiction of this division of circuit court.

Uniform Child Custody Jurisdiction & Enforcement Act, MCL 722.1101 et seq. Required procedures for cases involving more than one state.

Children’s Ombudsman Act, MCL 722.921 et seq. Describes the authority and duties of the Children’s Ombudsman; outlines procedure for filing complaints regarding an act by an administrative or child placing agency, including FIA.

Miscellaneous provisions regarding confidentiality and release of records:

MCL 333.2640. Medical records.

MCL 333.16281. Medical records.

MCL 333.16648. Dental records.

MCL 333.18117. Records of licensed professional counselors and limited license counselors.

MCL 333.18237. Records of psychologists.

MCL 330.1748 and 330.1748a. Mental health records.

MCL 333.6112 and 333.6113. Substance abuse counseling records.

MCL 600.2165. School records.

Michigan Court Rules

Michigan Rules of Court, Subchapter 3.900, Proceedings Involving Juveniles

Federal Law and Regulations

Adoption Assistance & Child Welfare Act of 1980, 42 USC 620 et seq. Requires courts to make certain findings regarding removal of a child from parental custody, including that continued custody by the parent would be “contrary to the child’s welfare” and that “reasonable efforts” have been made to prevent removal or to reunify the family. Provides for review and permanency planning hearings.

Adoption & Safe Families Act of 1997, PL 105-89. Includes provisions that clarify when the agency must make “reasonable efforts” to prevent removal of a child or to reunify a family.

Regulations implementing the Adoption & Safe Families Act of 1997, 45 CFR 1355.10 et seq. Detail required court and agency procedures.

Indian Child Welfare Act, 25 USC 1901 et seq. Sets forth the procedures required when an “Indian child” is involved in a child protective or other custody proceeding.

Individuals With Disabilities Education Act, 20 USC 1400 et seq. Requires states to make public education available to children with disabilities.

Miscellaneous provisions regarding confidentiality and release of records:

Health Insurance Portability & Accountability Act, 42 USC 1301 et seq. Medical records.

42 USC 290dd et seq. Substance abuse treatment and counseling records.

42 CFR 2.31 et seq. Substance abuse treatment and counseling records.

20 USC 1232g et seq. School records.

Key Michigan Case Law

In re Dittrick Infant, 80 Mich App 219 (1977). “Anticipatory neglect or abuse” and court jurisdiction over newborn child.

In re Baby X, 97 Mich App 111 (1980). Court jurisdiction over child born with controlled substances in his or her body; release of substance abuse counseling records.

In re Hatcher, 443 Mich 426 (1993). Subject matter jurisdiction and personal jurisdiction distinguished.

People v Gates, 434 Mich 146 (1986). Criminal and child protective proceedings based upon the same allegations.

Fritts v Krugh, 354 Mich 97 (1958). Temporary and long-term child neglect.

In re Jacobs, 433 Mich 24 (1989). Parental culpability and child neglect.

In re Miller, 182 Mich App 70 (1990). Domestic violence and “unfit home environments.”

In re Macomber, 436 Mich 386 (1990). Court’s authority to enter orders affecting adults after taking jurisdiction over a child.

In re Hensley, 220 Mich App 331 (1996). Judges’ control over interrogation of witnesses and presentation of evidence.

In re Brock, 442 Mich 101 (1993). Abrogation of privileges; use of alternative procedures to obtain child’s testimony.

In re LaFlure, 48 Mich App 377 (1973). Admissibility of evidence of a parent’s treatment of one child in hearings regarding a subsequent child.

In re Brimer, 191 Mich App 401 (1991). Expert witnesses in sexual abuse cases.

In re Rinesmith, 144 Mich App 475 (1985). Expert witnesses.

People v Beckley, 434 Mich 691 (1990). Expert witnesses.

People v Kasben, 158 Mich App 252 (1987). Competency of child witnesses.

People v Meeboer (After Remand), 439 Mich 310 (1992). Trustworthiness of child declarant's hearsay statements to medical personnel.

In re Snyder, 223 Mich App 85 (1997). Applicability of the rules of evidence at hearings on termination of parental rights.

In re Trejo Minors, 462 Mich 341 (2000). Burden of proof in termination of parental rights hearings.

In re AMB, 248 Mich App 144 (2001). Standards for removal of life support; authority of attorney appointed for child; referee authority.

Key Federal Case Law

Troxel v Granville, 530 US 57 (2000). Fundamental rights of parents to custody, care, and control of their children; constitutionality of "grandparent visitation" statutes.

Santosky v Kramer, 455 US 745 (1982). "Clear and convincing evidence" standard required to terminate parental rights.

Wisconsin v Yoder, 406 US 205 (1972). Religious freedom and state compulsory education laws.

Prince v Massachusetts, 321 US 158 (1944). Religious freedom and state laws designed to protect the health, safety, and welfare of children.

Stanley v Illinois, 405 US 645 (1972). A biological father's right to a parental fitness hearing prior to removal of a child from his custody.

Lehr v Robertson, 463 US 248 (1983). Requirement that a biological father of a child born out of wedlock establish a relationship with the child before being entitled to notice of a hearing to terminate his parental rights.

Idaho v Wright, 497 US 805 (1990). Constitutional requirements for admitting a child's hearsay statements.

Maryland v Craig, 497 US 836 (1990). Constitutional requirements for using alternative procedures to obtain a child's testimony.

Smith v Organization of Foster Families for Equality & Reform, 431 US 816 (1977).

Constitutionally required procedures for removal of children from foster homes.

DeShaney v Winnebago County, 489 US 189 (1989). Responsibility of state and local social services agencies to protect children from parental violence.

Other Print Resources

American Bar Association Standards of Practice for Lawyers Who Represent Children in Abuse and Neglect Cases (1996).

Proceedings of the Conference on Ethical Issues in the Legal Representation of Children, 64 Fordham L R 1281 (1996).

Donald S. Owens, *Juvenile Jury Instructions*, January 1995. Revised 2003.

Tobin L. Miller, *Child Protective Proceedings Benchbook: A Guide to Abuse & Neglect Cases* (MJJ, 1999). Available to download at

<http://courts.michigan.gov/mji/resources/publications.htm>.

Guidelines for Achieving Permanency in Child Protection Proceedings (Children's Charter of the Courts of Michigan, 1999).

Jennifer Warner, *Adoption Proceedings Benchbook* (MJJ, forthcoming). Available to download at <http://courts.michigan.gov/mji/resources/publications.htm>.

Useful Websites

ABA Center on Children & the Law, <http://www.abanet.org/child/>

US Dept of Health & Human Services, Administration for Children & Families,
<http://www.acf.dhhs.gov/programs/cb/>

National Association of Counsel for Children, <http://naccchildlaw.org/>

Michigan Child Welfare Law Resource Center,
<http://www.law.umich.edu/CentersAndPrograms/childlaw/>

Children's Charter of the Courts of Michigan, <http://www.childcrt.org/>

FIA Policy Manuals, <http://www.mfia.state.mi.us/olmweb/ex/html/>

American Academy of Pediatrics, www.aap.org

American Professional Society on the Abuse of Children, www.apsac.org